

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILLIAM ALLEN NEWSOM,)	
)	
Plaintiff)	C.A. No. 05-673 (GMS)
)	
v.)	
)	
COMMISSIONER STANLEY W. TAYLOR))	
BUREAU CHIEF PAUL HOWARD,)	
DEPUTY WARDEN DAVID PIERCE,)	JURY OF TWELVE DEMANDED
CAPTAIN SAGERS, SECURITY)	
SUPERINTENDENT CUNNINGHAM,)	
FIRST CORRECTIONAL MEDICAL, LLC,)	
DR. SITTA B. ALIE,)	
)	
Defendants.)	

DEFENDANT FIRST CORRECTIONAL MEDICAL, LLC'S
MOTION TO DISMISS

Pursuant to F.R.C.P. 12 (b)(6), defendant First Correctional Medical, LLC ("FCM") moves the court for an order dismissing all claims in the complaint against them on the grounds that the complaint fails to state a claim upon which plaintiff may recover. In support of its motion, FCM offers the following:

Background

1. Plaintiff is an inmate in the Delaware correctional system.
2. First Correctional Medical Delaware - LLC was the health care provider for the Delaware correctional system from July 1, 2002 to June 30, 2005.
3. Plaintiff filed his complaint on September 15, 2005. D.I. 2.
4. In his complaints, plaintiff alleges civil rights violations pursuant to 42 *U.S.C.* §1983 against FCM in connection with alleged improper medical treatment.

Legal Standards

5. There is no vicarious liability for civil rights claims. *Hyson v. Correctional Medical Services*, C.A. No. 02-318 (SLR), mem. order at 2-3, Robinson, C.J. (D.Del. Feb. 6, 2003) (copy attached as Exhibit 1). Personal involvement by a defendant is required. *Id.*, mem. op. at 3.

6. Pursuant to 18 Del. C. § 6853 (a)(1), an affidavit of merit must accompany a medical negligence complaint filed after October 9, 2003, or “the clerk of court shall refuse to file the complaint and it shall not be docketed with the court.”

7. Where the Clerk of Court or Prothonotary mistakenly accepts a medical negligence complaint without an affidavit of merit, the defendant’s remedy is a dismissal. *Jackson v. First Correctional Medical Services*, 380 F. Supp. 2d 387, 392 (D. Del.2005).

8. Under these legal standards, defendant FCM submits that dismissal is warranted because plaintiff’s complaint fails to state a claim against them upon which relief could be recovered.

Plaintiff has Failed to State a Claim against the FCM Defendants

9. Plaintiff has named FCM as a defendant in this matter. However, plaintiff has failed to state any allegations against FCM or identify any individual who is responsible for the alleged negligence in his complaint. Personal involvement by a defendant is a prerequisite to filing suit. *Hyson*, mem. order at 3. There is no vicarious liability for civil rights actions, so the complaint fails to state a claim against FCM. *Id.*

Plaintiff has Failed to File an Affidavit of Merit

10. Plaintiff’s complaint was not accompanied by either an affidavit of merit or a motion to extend the time for filing such affidavit. As such, plaintiff’s state law claims must be dismissed as a matter of law. *Jackson*, 380 F. Supp. 2d at 392.

Conclusion

11. For the above reasons, the FCM respectfully requests that all claims against them be dismissed with prejudice.

McCULLOUGH & McKENTY, P.A.

/s/ Dana Spring Monzo
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Attorneys for First Correctional Medical,
LLC.

Dated: May 15, 2007

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)	
Defendants.)	

CERTIFICATE OF SERVICE

I, Dana Spring Monzo, do hereby certify that on this date two copies of **Motion to Dismiss** were served by first class mail, postage prepaid, and electronic service on the following individuals:

Via First Class Mail
William A. Newsom
S.B.I.# 257317
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977

Via Electronic Service
Eileen Kelly, Esquire
Department of Justice
820 N. French St., 6th Fl.
Wilmington, DE 19801

/s/ Dana Spring Monzo

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ORDER

And now this _____ day of _____, 2007, having considered
First Correctional Medical LLC's Motion to Dismiss and any opposition thereto,

It is HEREBY ORDERED that First Correctional Medical LLC's Motion to Dismiss is
granted.

J.